

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRIAN MALTA and VALERIE MALTA,

Plaintiffs,

v.

RICHARD E. SLAGLE, et. al.,

Defendants.

DECISION & ORDER
05-CV-342S

At the status conference on June 13, 2008, Defendants' counsel suggested that Plaintiffs' counsel's communication with Village Trustee Sanderson was inappropriate.

Defendants contend that Sanderson, as a member of the Village of Celoron Board of Trustees, is a Defendant and a represented party. This Court disagrees. Trustee Sanderson is not named as a Defendant in this action. Although the Board of Trustees is named as a Defendant, this Court views the Board as a municipal entity, and not as a collection of individual Defendants. Accordingly, because Trustee Sanderson is not named as a Defendant, he is not a Defendant in this case.

Moreover, it appears that until today, both parties operated under the assumption that Sanderson was not a Defendant. Further evidence that Plaintiffs never intended Sanderson to be a Defendant by virtue of his position on the Village Board is that Plaintiffs sued individual Board Members and named them as separate Defendants, sued in their individual and official capacities. This Court therefore detects no impropriety with Plaintiffs' counsel contacting Sanderson, whom he believed to be solely a witness, and not a represented party or a Defendant. To the extent Defendants seek to preclude Sanderson from appearing as a witness on this basis, that request is denied.

SO ORDERED.

Dated: June 13, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge